

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Priority Mail Express
Priority Mail Express Contract 34

Docket No. MC2016-93

Competitive Product Prices
Priority Mail Express Contract 34 (MC2016-93)
Negotiated Service Agreement

Docket No. CP2016-118

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
REQUEST TO ADD PRIORITY MAIL EXPRESS CONTRACT 34
TO THE COMPETITIVE PRODUCT LIST

(March 14, 2016)

The Public Representative hereby provides comments pursuant to Order No. 3133.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express Contract 34 to the competitive product list.²

The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), a public (redacted) version of Governor's Decision No. 11-6 and related analysis, a public version of Priority Mail Express Contract 34, and proposed changes to the Mail Classification Schedule competitive product list with the additions underlined. The Postal Service also filed under seal an unredacted version of Governor's Decision No. 11-6 and Contract 34, and supporting financial data estimating the contract value during the first year.

¹ Order No. 3133, Notice and Order Concerning the Addition of Priority Mail Express Contract 34 to the Competitive Product List, March 7, 2016.

² Request of the United States Postal Service to Add Priority Mail Express Contract 34 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 4, 2016 (Request).

According to the Postal Service, Priority Mail Express Contract 34 is a competitive product featuring rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. The Postal Service also maintains that the prices and classification changes applicable to Contract 34 are supported by Governors’ Decision No. 11-6.³ The Postal Service further asserts that the Statement of Supporting Justification (Statement) provides support for adding Contract 34 to the competitive product list and the compliance of the instant contract with 39 U.S.C. § 3633(a). *Id.* at 2.

The effective date for Contract 34 is two business days following approval from the Commission. *Id.*, Attachment B at 4 (Article II). The contract will expire 3 years from the effective date unless either party terminates the contract on 30 days’ prior written notification, or other specific events. *Id.*, Attachment B at 4 (Article III).

COMMENTS

The Public Representative has reviewed the Postal Service’s Request, Priority Mail Express Contract 34, the Statement of Supporting Justification, and financial data filed under seal with the Request. Based upon that review, the Public Representative concludes that Contract 34 should be classified as a competitive product and added to the competitive product list. In addition, Contract 34 is projected to generate sufficient revenues to cover costs in its first year and thereby satisfy 39 U.S.C. § 3633(a).

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that Contract 34 be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such powers are categorized as market dominant while all others are categorized as competitive.

³ Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

The Postal Service Statement makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D, at 2. Based upon these assertions, the Public Representative concludes that Priority Mail Express Contract 34 should be added to the competitive product is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial data, the negotiated prices for Priority Mail Express Contract 34 should generate sufficient revenues to cover costs during the first year of the contract and therefore meet the requirements of 39 U.S.C. § 3633(a).

As noted above, the contract is expected to remain in effect for a period of 3 years. The Postal Service provides no data to demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during years 2 and 3. However, the concern is mitigated by the fact that the terms of the contract allow for an annual adjustment in the negotiated rates that should permit revenues to cover costs in years 2 and 3. Furthermore, the Commission has an opportunity to review the financial results of the contract for compliance with U.S.C. § 3633(a) each year in the Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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